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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,547	02/12/2004	Robert Anders	1867.002US1	5750
21186	7590	09/20/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402-0938			RAO, G NAGESH	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,547

Applicant(s)

ANDERS ET AL.

Examiner

G. Nagesh Rao

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

1) Claims 5, 13, 18, 27, and 28 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The aforementioned claims refer to products worked upon in the device and fail to structurally limit their parent claims pertaining to the apparatus.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2) Claims 1-9, 12-21, and 23-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Sperry (US PG Publication 2001/0049921).

Sperry teaches a foam in bag packaging system where there is packaging station that reads on as a foam containment unit, a foam precursor storage unit and a foam precursor heating unit in thermal proximity to the storage unit, a mixing chamber for physical agitation of the precursor components, and furthermore the

heating unit comprised of being used with heating coils (See Figures 1, 11-14 and Sections 0043-0051, 0071-0074, and 0099-0104).

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3) Claims 1-21 and 23-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Anders (US PG Publication 2005/0033207 A1 which has an earlier provisional filing date of 8/4/03 filed under provisional application number 60/492,354.

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Anders 207 teaches an immobilizing apparatus as can be seen in Figure 4 that reads on claimed invention comprising a foam containment unit (200) adapted

to contain a foam produced from a combination of at least 2 foam precursor components, a foam precursor storage unit (206) that is capable of being contact with a foam precursor heating unit which can be comprised of an electrical energy supply device including a battery, an activation mechanism (710) (See Figures 7-9 and Section 0060-0063). Furthermore Anders 207 teaches alongside with device a mixing chamber (420 and See section 0044) for physical agitation of the foam precursor components, the use of a syringe device (Section 0053).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 3) Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram (US Patent No. 5,899,325) in view of Anders (US PG Publication 2005/0033207 A1 which has an earlier provisional filing date of 8/4/03 filed under provisional application number 60/492,354 in further view of Sperry (US PG Publication 2001/0049921 A1).

Bertram 325 discloses an invention related to foam in bag packaging system and method for producing the same. As taught in claim 1 of Bertram 325 there as depicted a foam-in-bag cushion (30) which reads on foam containment unit, a foam precursor packet (40) that reads on foam precursor storage unit with a first compartment (50) filled with a first foam precursor component (52) and a second compartment (51) filled with a second foam precursor component (53) (Col. 3 Lines 1-5 and Col. 4 Lines 13-19).

Furthermore the language in the specification Col. 7 Lines 29-37, suggest the use of some sort of heating unit to initiate a reaction between the materials enclosed in the foam precursor storage unit. It can be interpreted that the location of the heating unit could either be located in the interior or exterior foam-in-bag cushion device. It is also known that traditional heating units would traditionally consist of a heating coil, battery pack energy source, and a switch for activation.

Furthermore the materials incorporated in the use of this device is merely viewed as a recitation of intended use, as in the case of incorporating a supercooled liquid for cooling the processed foam material.

A delivery mechanism system is taught in the specification for transferring the material from the first and second foam precursor compartments. The delivery mechanism is capable of delivering the material to whichever source is desired by the user (Col. 10 Lines 19-40).

As incorporated by reference in Bertram 325 the following prior art Sperry (US Patent No. 5,699,902) indicated in Col. 5 Line 12, describes a mixing means for mixing the materials from the first and second foam precursor components (Col. 8 Lines 55-65 and also see claim 20) which anticipates the use of a mixing chamber and furthermore is read on as a type of physical agitation device.

It is also known in the prior art as taught by Sperry 902 that injection devices are used in these foam precursor units (Col. 1 Lines 29-42) which is interpreted in the art as a type of syringe.

However as amended by applicant in claimed invention, Bertram 325 failed to specifically teach a "foam precursor unit, located in contact with and in thermal proximity to the foam precursor storage unit...". Although Bertram 325 eludes in its specification that such a heating means is occurring it is not specifying enough

whether it the foam precursor storage unit is contact with and in thermal proximity to that of the foam precursor heating unit.

In an invention related to foam in package systems, Anders 207 discusses the use of a device where the foam precursor heating unit is in contact with a foam storage unit.

Therefore it would be obvious to one skilled in the art, based on the language described in the specification of Bertram 325, that it would be obvious to incorporate the teachings of Anders 207 into that of Bertram 325, given that Bertram 325 implicitly describes the process of heating process to occur and that it would be obvious that the only way the heating is occurring to be dispensing from a heating unit as described in Anders 207.

The hypothetical device as taught by Bertram 325 and Anders 207 both refers to heating means and/or units for the foam precursor components. Albeit they elude to the makeup of the heating unit, Sperry 921 from the aforementioned teaches a similar foaming in bag package system, where the heating unit is operated by heated coils. Therefore making it obvious to one skilled in the art to substitute one heating means for another, based on the desired preference, but that it is well known to use coils as a source of heating means.

Conclusion

Applicant's arguments filed 7/27/05 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 7/27/05 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS**

ACTION IS MADE FINAL. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Nagesh Rao whose telephone number is (571) 272-2946. The examiner can normally be reached on 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GNR



ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300 / 700

9/16/05